

Case C-435/97

World Wildlife Fund (WWF) and Others

v

Autonome Provinz Bozen and Others

(Reference for a preliminary ruling
from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, Italy)

(Environment — Directive 85/337/EEC — Assessment of the effects of certain
public and private projects)

Opinion of Advocate General Mischo delivered on 29 April 1999. I-5617

Judgment of the Court (Sixth Chamber), 16 September 1999 I-5637

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Jurisdiction of the national courts — Determination and assessment of the facts of the dispute (EC Treaty, Art. 177 (now Art. 234 EC))*

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2. *Preliminary rulings — Reference to the Court — Whether the decision to refer a matter has been taken in accordance with the rules of national law governing judicial procedure and organisation — Not for the Court to determine*
(EC Treaty, Art. 177 (now Art. 234 EC))
3. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Projects of the classes listed in Annex II to be subject to assessment — Discretion of the Member States — Scope and limits — Possibility for individuals to rely on the relevant provisions to ensure that such discretion is exercised within the proper limits*
(Council Directive 85/337, Arts 2(1) and 4(2))
4. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Assessment procedure — Open to Member States to use an alternative procedure — Conditions*
(Council Directive 85/337, Art. 2(1) and (2))
5. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Scope — Projects adopted in detail by specific domestic legislation — Not covered*
(Council Directive 85/337, Art. 1(5))
6. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Scope — Airport which may serve both civil and military purposes but primarily for commercial use — Covered*
(Council Directive 85/337, Art. 1(4))

1. Under Article 177 of the Treaty (now Article 234 EC), which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered to rule only on the interpretation or validity of Community provisions on the basis of the facts which the national court puts before it. It is not for the Court of Justice, but for the national court, to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver.
2. In view of the distribution of functions between the Court of Justice and the national courts, it is not for the Court to determine, in the procedure provided for in Article 177 of the Treaty (now Article 234 EC), whether the decision to bring a matter before it was taken in accordance with the rules of national law governing the organisation and procedure of the courts.
3. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment provides that projects of the classes listed in Annex II to the Directive are to be made subject to an assessment where Member States consider that their characteristics so

require and that to that end Member States may specify certain types of project as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes concerned are to be so subject. The limits of that discretion are to be found in the obligation, set out in Article 2(1) of the Directive, under which projects likely, by virtue *inter alia* of their nature, size or location, to have significant effects on the environment must be subject to an impact assessment.

before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such cases, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

The above provisions must be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, either under national legislation or on the basis of an individual examination of that project, unless the specific project, or those classes of project in their entirety, could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment.

4. In the case of a project requiring assessment under Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2) of the Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the Directive, including the public participation requirement laid down in Article 6.

Where the discretion conferred by Articles 4(2) and 2(1) has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions

5. Article 1(5) of Directive 85/337 on the assessment of the effects of certain public and private projects on the

environment, under which the Directive is not to apply to projects the details of which are adopted by a specific act of national legislation, must be interpreted as not applying to a project, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision must satisfy, as must the process under which it has been adopted, in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which

may be relevant to the assessment of the impact of the project on the environment.

6. Article 1(4) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, under which the Directive does not cover projects serving national defence purposes, is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive.